

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PEGGY DOUGHTERY, individually and
as parent and natural guardian of D.J., a
minor,

Plaintiff,

v.

C.R. BARD, INC., and DAVOL, INC.,

Defendants.

CIVIL ACTION NO. 11-6048

ORDER

AND NOW, this 18th day of July, 2012, upon careful consideration of defendants' motion to dismiss plaintiff's first amended complaint (document no. 7), plaintiff's opposition thereto, and defendants' reply, **IT IS HEREBY ORDERED** that the motion is **GRANTED** as follows:

1. The following claims are **DISMISSED WITH PREJUDICE**: (a) counts II and III, alleging strict liability based on a design defect and a failure to warn, respectively; (b) the claim for breach of the implied warranty of merchantability in count V, but only insofar as it is based on an alleged design defect or failure to warn; (c) the claim for breach of the implied warranty of fitness for a particular purpose in count V; and (d) count VI, alleging a violation of the Unfair Trade Practices and Consumer Protection Law.

2. Plaintiff's remaining claims are **DISMISSED WITHOUT PREJUDICE** to plaintiff's right to file a second amended complaint, if she can do so in compliance with the limits of Rule

11, within 20 days of the date of this order. Otherwise, these claims will be dismissed with prejudice after the 20-day period has expired.

/s/William H. Yohn Jr.

William H. Yohn Jr., Judge